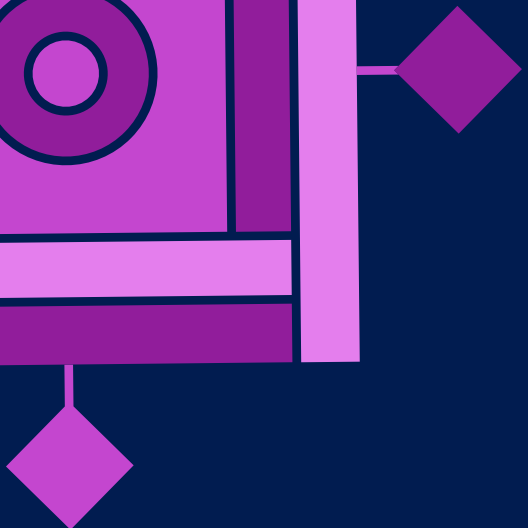
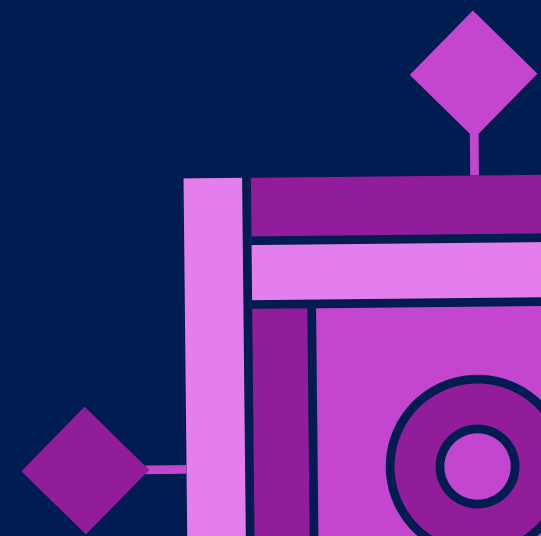




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OCTOBER 2024 LEGAL PRECEDENT REPORT



SUMMARY OF DECISIONS

- **Conditions for Bad Faith Compensation: Wrongful Enforcement and Bad Faith**
 - Pursuant to Article 67, paragraph 2 of the Execution and Bankruptcy Law, upon the conclusion of an action for annulment of objection in favor of the debtor, whether the claim is liquidated or not, if the enforcement is found to be wrongful and in bad faith, the court must award bad faith compensation in favor of the debtor if requested. Here, the wrongful nature of the enforcement alone is insufficient; bad faith is also required, with the burden of proof on the debtor who alleges the bad faith of the enforcement. It should be noted that the creditor is considered to be acting in bad faith if they initiate enforcement proceedings despite knowing, or being in a position to know, that no claim exists (Istanbul RCA, 3. CC, M. 2024/318 D. 2024/2493 D. 1.10.2024).
- **No Dissolution Decision Without Appointment of Trustee for Formation of Corporate Bodies**
 - In cases concerning the dissolution of a joint-stock company due to the absence of required corporate bodies, it is incorrect to order dissolution and liquidation without appointing a trustee to ensure the company's representation and establish its organs, as giving additional time without such appointment will not yield results in compliance with Article 530 of the Turkish Commercial Code (Istanbul RCA, 12. CC., M. 2024/918 D. 2024/1375, D. 2.10.2024).

- **Material Harm is Not an Infringement on Personal Values; Moral Damages Cannot Be Awarded**

- Cases in which moral compensation can be awarded include impairment of personal rights (Turkish Civil Code, Art. 24), attacks on reputation (Art. 26), breaking of an engagement (Art. 121), annulment of marriage (Art. 158), and causing bodily harm or death (Turkish Code of Obligations, Art. 56), provided that personal rights are infringed upon (Turkish Code of Obligations, Art. 58). According to Article 58, which regulates the conditions for moral compensation, material harm alone cannot be considered an infringement on one's social, physical, or personal values (İstanbul RCA, 4. CC., M. 2023/1184 D. 2024/3484 D. 9.10.2024).

- **Party Status: Subjective Right**

- Party status in proceedings is also referred to as active or passive standing in case law. Party capacity, standing to sue, and the authority to pursue the action pertaining to procedural law issues involving the parties' personal capacities, whereas party status pertaining to the subjective right at issue (a substantive law matter). The authority to claim a subjective right (claimant status – right to sue) belongs to the holder of the right (active standing), who may assert it against the person obligated to respect that right (defendant status – passive standing) (İstanbul 4. CCIPPR, M. 2024/161 D. 2024/179, D. 11.10.2024).

- **Failure to Consider Witness Testimony Violates the Right to a Fair Trial**

- The failure to evaluate clearly presented evidence in a trial, such as neglecting to consider witness evidence that may benefit one party, renders the procedural guarantees of the right to a fair trial meaningless. Thus, a violation of the right to be tried fairly under the right to a fair trial occurs (Official Gazette No. 32681, D. 03.10.2024 - Constitutional Court, D. 11.06.2024, A.No. 2019/7376).

- **Criteria for Moral Damages Based on the Unlawfulness of Protective Measures**

- In claims for non-pecuniary damages due to unlawful protective measures such as arrest, detention, or custody, the individual's social and economic situation, professional and social status, nature of the alleged crime, duration of the protective measure, and the context of the incident that led to the measure should be considered. When multiple rights are violated by an unjust protective measure, the negative impact on the individual and the severity of the rights violations must also be taken into account (Official Gazette No. 32685, D.07.10.2024 - Constitutional Court, D. 29.05.2024, A.No.2021/23140).
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- **Consumer Arbitration Committee is Competent in Disputes Regarding Cargo Delivery**

- In disputes involving claims for the recovery of goods and transportation costs due to the unauthorized delivery of goods to a third party under a cargo contract, the defendant sender is considered a “consumer” under the Consumer Protection Law No. 6502, and the defendant’s action constitutes a “consumer transaction.” Accordingly, such disputes fall within the jurisdiction of the Consumer Arbitration Committee (Official Gazette No. 32693, D.15.10.2024 - Supreme Court 11. CC, M. 2024/3362, D. 2024/5216, D. 26.06.2024).

- **Custody Decisions Must Be Justified with Adequate Reasoning in the Best Interest of the Child**

- In custody determination proceedings, expert reports must consider the circumstances of the parties and the risks or events affecting the child and propose the most suitable solution for the child’s physical and psychological development, sufficiently explaining how the chosen solution serves the best interests of the child. Otherwise, the principle of the best interest of the child and the right to respect for family life are violated (Official Gazette No. 32702, D. 24.10.2024 – Constitutional Court, D. 06.06.2024, A.No. 2022/57145).
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- **Demolition Activity Under the Squatter Law is an Administrative Action**

- While administrative acts are declarations of intent that create new rights in the legal sphere, administrative actions are activities that produce legal effects and results without the establishment of a formal act when the administration exercises its powers to fulfill its duties. Accordingly, a demolition activity carried out by the administration without a decision, under the authority granted by Article 18 of the Squatter Law No. 775, is considered an administrative action, not the execution of an administrative act, as there is no underlying administrative decision (Official Gazette No. 32705, D. 27.10.2024 - Council of State, 6th Chamber, M. 2023/9035, D. 2024/4026, D. 26.06.2024).
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- **A Legitimate Expectation in Property Rights Requires a Well-Founded Expectation of Acquiring Rights**

- Article 35 of the Constitution provides that the right to property is, in principle, a safeguard for current possessions, assets, and belongings. An expectation of acquiring ownership over an asset not currently held, regardless of the strength of interest, does not fall under the protected concept of property. The exception is a legitimate expectation in cases where a specific legal provision or established case law indicates a high probability of success or where there exists a legal transaction related to property interests. A baseless expectation of acquiring rights is insufficient to constitute a legitimate expectation (Official Gazette No. 32703, D. 25.10.2024 – Constitutional Court, D. 15.05.2024, A.No. 2020/26624).
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